



Memorandum

TO: CITY COUNCIL

SUBJECT: SANTA CLARA VALLEY
HABITAT CONSERVATION
PLAN

FROM: Mayor Chuck Reed

DATE: January 25, 2013

APPROVED: *Chuck Reed* **DATE:** 1/25/13

RECOMMENDATION

Approve the Habitat Conservation Plan (HCP) with the following changes and authorize the City Manager to execute the necessary documents once the changes have been made and the revised documents have been provided to the City Council:

1. Modify the appropriate documents for the HCP (**Santa Clara Valley Habitat Plan**, the **Implementing Agreement**, the **Joint Exercise of Powers Agreement**, the new **Memorandum of Understanding** with the Open Space Authority, and the **Model Implementing Ordinance**) as necessary to implement the following changes:
 - a. Include commitments by all Parties to work together expeditiously and use their regulatory authority and influence to have the land dedication and fee requirements for burrowing owls, riparian corridor and nitrogen impacts mitigations applied throughout Santa Clara County and Southern Alameda County, and attach and incorporate the letter from the wildlife agencies to the City of San Jose dated October 12, 2012, and the related undated Template Letter to other municipalities from the wildlife agencies regarding the HCP implementation and mitigation requirements.
 - b. Include commitments of all Partners to work together expeditiously to get the Army Corps of Engineers and the Regional Water Quality Control Boards to use the HCP framework for issuing permits.
 - c. Identify specific steps that will be taken by the Parties to implement the commitment to work together expeditiously to get the Army Corps of Engineers and the Regional Water Quality Control Boards to use the HCP framework for issuing permits and add them to the **Table 8-1, Schedule for Major Implementation Tasks**.
 - d. Add a section that incorporates and carries forward the purpose specified in the original MOU to provide for the "continued economic health of the region."

- e. Add a section that acknowledges that the Parties intend to honor existing Development Agreements, Mitigation Agreements, and the Airport Burrowing Owl Management Plan.
 - f. Clarify that the Parties may fund their share of the Nitrogen Deposition Fee from any funding sources the Parties elect to use.
2. Modify the **Santa Clara Valley Habitat Plan** within the first year of adoption as follows:
 - a. Add a section to the text of the Plan and to **Table 6-1 Covered Activities Exempt from Plan Conditions and/or Plan Fees** to make clear that existing developments that have improvements within the riparian corridor will not be subject to riparian corridor impact mitigation requirements for activity within the footprint of those improvements.
 - b. Add a section to the Plan in **Chapter 2.3.2, Private Development Subject to the Plan** and to **Table 6-1 Covered Activities Exempt from Plan Conditions and/or Plan Fees** to make clear that activities on existing developed sites are not subject to the Plan unless they add 5,000 square feet or more of new impervious surface.
3. Modify the implementation Time Period in **Table 8-1 Schedule for Major Implementation Tasks – Prior to Permit Issuance** to require the following items to be available to the public and the business development community 90 days prior to the effective date of the first local ordinance: template Plan application package; checklist for planners to evaluate the application; and template form to document consistency with the Plan.
4. Modify the **Economic Impact Analysis** and the responses to comments on the Environmental Impact Report to acknowledge that equalizing the land dedication and fee requirements for burrowing owls, riparian corridor and nitrogen impacts mitigations throughout Santa Clara County and Southern Alameda County will be required to ensure that the cumulative impact of the Plan fees and dedication requirements will not have a significant impact on development patterns.
5. Direct staff to include in the FY 2013-14 Budget a proposal to fund the proposed Nitrogen Deposition Fee from City Construction Taxes for projects in the Downtown, North San Jose, Urban Village or Employment Land areas, until such time as other alternative funding sources are identified.
6. Direct staff to expeditiously develop the local “no surprises” policy to provide more certainty to the development community and return to Council for approval in 2013.
7. Direct the City Manager to reallocate City staff time to accomplish Items 4 and 5 above and to recommend funding for City staff time and any other modifications necessary to implement the adoption of the HCP at mid-year budget review.